

1 **UNITED STATES DISTRICT COURT**
 2 **DISTRICT OF NEVADA**

3 * * *

4 JAMES CHIPMAN,

5 Plaintiff,

6 v.

7 LYFT, INC.,

8 Defendants.

Case No. 2:23-cv-00761-JCM-BNW

REPORT AND RECOMMENDATION

10 On April 12, 2024, the Court granted Lyft's Motion to Compel James Chipman's
 11 responses to Requests for Production and Interrogatories. ECF No. 31. Lyft later filed a Status
 12 Report indicating that Chipman failed to serve his discovery responses. ECF No. 33. The Court
 13 then issued an order for Chipman to show cause why he should not be sanctioned for failure to
 14 comply with the Court's order. ECF No. 34. Chipman once again failed to comply with the
 15 deadline and to date has not filed a Show Cause Response. As a result, the Court recommends
 16 that Chipman's case be dismissed without prejudice.

17 The law permits a district court to dismiss an action based on a party's failure to comply
 18 with a court order. *See Ferdik v. Bonzelet*, 963 F.2d 1258, 1260–61 (9th Cir. 1992) (dismissal for
 19 failure to comply with an order requiring amendment of complaint). In determining whether to
 20 dismiss an action on this ground, the court must consider: (1) the public's interest in expeditious
 21 resolution of litigation, (2) the court's need to manage its docket, (3) the risk of prejudice to the
 22 defendants, (4) the public policy favoring disposition of cases on their merits, and (5) the
 23 availability of less-drastic alternatives. *In re Phenylpropanolamine Prod. Liab. Litig.*, 460 F.3d
 24 1217, 1226 (9th Cir. 2006) (quoting *Malone v. U.S. Postal Serv.*, 833 F.2d 128, 130 (9th Cir.
 25 1987)).

26 The first two factors, the public's interest in expeditiously resolving this litigation and the
 27 Court's interest in managing its docket, weigh in favor of dismissal of Chipman's claims. The
 28 third factor, risk of prejudice to Defendants, also weighs in favor of dismissal because a

1 presumption of injury arises from the occurrence of unreasonable delay in filing a pleading
2 ordered by the court or prosecuting an action. *See Anderson v. Air West*, 542 F.2d 522, 524 (9th
3 Cir. 1976). The fourth factor—the public policy favoring disposition of cases on their merits—
4 weighs against dismissal.

5 The fifth factor requires the Court to consider whether less-drastic alternatives can be used
6 to correct the party’s failure that brought about the Court’s need to consider dismissal. Courts
7 “need not exhaust every sanction short of dismissal before finally dismissing a case, but must
8 explore possible and meaningful alternatives.” *Henderson v. Duncan*, 779 F.2d 1421, 1424 (9th
9 Cir. 1986). Because this action cannot proceed without Chipman’s active participation in the case,
10 the only alternative is to enter another order setting another deadline. The circumstances here do
11 not indicate that Chipman needs additional time. Therefore, setting another deadline is not a
12 meaningful alternative, especially given that Chipman has failed to comply with two prior orders
13 regarding the same issue. So, the fifth factor favors dismissal.

14 In balance, the factors above favor a recommendation of dismissal. *See Hernandez v. City*
15 *of El Monte*, 138 F.3d 393 (9th Cir. 1998) (holding that dismissal is proper where at least four
16 factors support dismissal or where at least three factors “strongly” support dismissal).

17 **IT IS THEREFORE RECOMMENDED** that this action is DISMISSED for failure to
18 comply with the Court’s Order Granting Lyft’s Motion to Compel (ECF No. 31) and the Court’s
19 Order to Show Cause (ECF No. 34).

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1 **NOTICE**

2 This report and recommendation is submitted to the United States district judge assigned
3 to this case under 28 U.S.C. § 636(b)(1). A party who objects to this report and recommendation
4 may file a written objection supported by points and authorities within fourteen days of being
5 served with this report and recommendation. Local Rule IB 3-2(a). Failure to file a timely
6 objection may waive the right to appeal the district court's order. *Martinez v. Ylst*, 951 F.2d 1153,
7 1157 (9th Cir. 1991).

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9 DATED: May 30, 2024

10 
11 BRENDA WEKSLER
12 UNITED STATES MAGISTRATE JUDGE

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